IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9350 OF 2004

Shri J.G.Mehta .. Petitioner.
Vs.
Maruti Pundlik Bandekar & Ors. .. Respondents.

Mr.R.A.Thorat for the petitioner
Mr.A.G.Damle for the respondent-landlords.

CORAM : D.B.BHOSALE, J.

DATED : 11TH JANUARY, 2007

P.C.:

. Heard learned counsel for the parties.

2. A decree of eviction against the petitioner-tenant in a suit filed by the respondent-landlords on the ground of bonafide requirement is under challenge in the present petition under Article 227 of the Constitution of India. Mr.Thorat, learned counsel for the petitioner submitted that the courts below have not taken into consideration that pending these proceedings three more flats were constructed by the landlords in the same building and they got possession of one more flat from another tenant and in view thereof the requirement of the landlords cannot be said to be bonafide. I perused the judgment. It is true that

during pendency of this proceedings three more flats were constructed by the landlords. The landlords have very large joint family and it is clearly reflected from the record that these three flats were constructed by the landlords for the benefit of other members of the family. The requirement of the suit premises in the present proceedings is admittedly of plaintiff no.1 and his marriagable son. The courts below have rightly taken into consideration the requirement of plaintiff no.1 and his 32 years old son, who admittedly is not married till this date. The appeal court has considered this aspect in proper prespective and has rightly held that the requirement of the landlord has been established. Merely because plaintiff no.1 got possession of a flat, vacated by a tenant pending these proceedings that by itself would not be sufficient to hold that the requirement of the premises for the son of plaintiff no.1 does not exists anymore. Insofar as hardship is concerned, Mr.Thorat, learned counsel for the petitioner submitted that the landlord has not led any evidence and discharged the burden in order to prove the hardship as contemplated under sub-section (2) of section 13 of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947. He submitted that burden is also on the landlord to show that greater hardship would be caused to him if the decree of eviction is refused.

According to Mr.Thorat the landlord has not shown as to how greater hardship would cause him. In support of his contention he placed reliance upon judgment of the Apex Court in **P.B.Desai Vs. C.M.Patel and Others AIR 1974 Supreme Court 1059**. I perused the judgment as also the findings recorded by the courts below and evidence of the plaintiff. Both the courts below have concurrently held that greater hardship would be caused to the plaintiff if the decree of eviction is not passed in his favour. The landlord has categorically stated in his evidence that his son has yet not married because he requires separate accomodation and he could not afford to provide separate accomodation to his son. The plaintiff no.1 after his retirement shifted to a flat vacated by the tenant, during pendency of the suit. Plaintiff no.1 was earlier residing in a service quarters. In my opinion, that cannot be a ground for rejecting the requirement of the suit premises for 32 years old son who is yet not married and who desires to get married only if he has independent accomodation. It is now well settled that the landlord is best judge of his need and tenant cannot dictate him as to how he should adjust himself without getting possession of the tenanted premises. Keeping that in view and considering the findings of fact recorded by the courts below I am not inclined to interfere under

Article 227 of the Constitution of India. The writ petition accordingly stands dismissed. The petitioner to vacate the suit premises as per the decree within eight weeks from today subject to filing of an usual undertaking of all the adult members in the family within two weeks from today with an advance copy of the undertaking to the advocate for the respondent-landlords. If the petitioner fails to file the undertaking as aforestated it would be open for the respondent-landlords to execute the decree. The filing of an undertaking shall not curtail the right of the petitioner to carry the matter further, if they so desire.

(D.B.Bhosale, J.)